

ATTACHMENT #2 - Rationale for Proposed Change to *VIII(b)

The Department of State's proposed amendment to the International Traffic in Arms Regulations (ITAR), Part 121, moves military hot section components and military digital engine controls for military aircraft engines from Category VIII(h)), which were identified as "components, parts, accessories" to Category *VIII(b) making reference to "all specifically designed hot section components and digital electronic engine controls". This change results in the designation of these items as "significant military equipment" or "SME," as that term is defined in Section 120.7(b)(1), which adds special export controls to the licensing process such as Congressional Notification.

According to the Supplementary Information, this change to Category *VIII(b) was made "in order to simplify the implementation of the criteria of Section 17(c) consistent with the aims of the AECA." The proposed rule requires that a Commodity Jurisdiction (CJ) be obtained for SME notwithstanding the applicability of the Section 17(c) criteria, except where the SME was "integral to civil aircraft" prior to the effective date of the amendment. Thus, it appears that the primary goal of the movement of military hot section components and digital electronic engine controls to Category *VIII(b) is to ensure that parties do not self-determine jurisdiction for these items, but rather seek formal CJ determinations.

AIA does not oppose this goal, and recognizes the U.S. Government's legitimate interest in determining the jurisdiction of sensitive military commodities. However, the SME designation would impose a significant, and apparently unintended, negative licensing impact upon aircraft engine companies. The following requirements would result from the designation of military hot section components and digital electronic engine controls as SME:

- A significant increase in the number of manufacturing license agreements and technical assistance agreements that will require Congressional notification under Section 124.11, adding significant review time.
- Requiring Congressional notification for certain hardware licenses and procurement licenses, again adding significant review time.
- Requiring non-transfer and use certificates (Form DSP-83) for all applications to export hot section components and digital engine controls.
- Requiring written DDTC approval before foreign defense articles incorporating such items may be re-exported or re-transferred to a government of a NATO country or the governments of Australia or Japan.
- Prohibiting the use of exemptions of general applicability for the export of the newly designated SME components.
- Additional requirements under the Canadian exemption, Section 126.5(b), for which DSP-83s would also be required.
- Additional requirement to obtain prior approval of, or make prior notification to, DDTC, before making proposals for the sale or manufacture abroad of these newly designated components.
- Additional approval and notification requirements for brokering activities, pursuant to Section 129.7(a)(2) and 129.8.

Accordingly, the proposed text would effect a material and fundamental change to the classification of items that has been in place for more than a decade affecting the the entire military aircraft supply chain. The change would detrimentally impact the competitiveness of U.S. military engine manufacturers by increasing licensing timelines and imposing additional burdens on foreign customers. In addition, the proposal would negatively impact the DDTC, because exporters will submit multiple license applications (separating hot section and non-hot section components), as well as prior approval requests.

To avoid these consequences, while still accomplishing the Department of State's goal of requiring CJ determinations for hot section components and digital engine controls, AIA proposes simply moving the reference to such components to the Note where it discusses the requirement of CJs for SME.

If the Department of State intended to effect the licensing consequences discussed above, AIA respectfully submits that a rulemaking focused on clarifying the application of 17(c) is not the appropriate regulatory vehicle to implement an increased control on particular aircraft engine parts, components and software. The Department should instead pursue a separate rulemaking exercise to ensure that this significant change receives appropriate scrutiny. Further, if the licensing impact is intended, the Department should provide additional justification and give industry an opportunity to evaluate and react to the true basis for the proposed change.

Finally, some members of AIA were concerned that the proposed amendment to Category *VIII(b) could be read as an attempt to designate as USML (and as SME) all digital electronic engine controls – even if designed purely for civil applications. The potential confusion arises from the placement of the phrase “specifically designed military” in the proposed amendment, which is not proximate to the phrase “digital engine controls.” Because of the use of digital engine controls in civil aircraft worldwide, including systems that are appropriately considered dual use and commercial, we are confident DDTC is not proposing to make all such electronic controls ITAR-controlled. Therefore, we have revised the language to make this clear by adding the phrase “specifically designed or modified for military applications” to both the hot section components and the digital engine controls. If our understanding in this regard is incorrect, please let us know immediately because such a change will have dramatic consequences for the civil aircraft industry.